



Gavin J. Rooney
Partner

1251 Avenue of the Americas
New York, New York 10020

T: (973) 597-2472
F: (973) 597-2473
E: grooney@lowenstein.com

February 13, 2023

VIA ECF

Hon. Jennifer L. Rochon, U.S.D.J.
United States District Court, Southern District of New York
500 Pearl Street
Room 1360
New York, NY 10007

RE: *RBG Management Corp. v. Village Super Market, Inc.*
No. 22-cv-07996 (JLR)

Dear Judge Rochon:

This firm represents Defendant Village Super Market, Inc. (“Village”) in the above-captioned matter. Village writes to respectfully request an amendment to the Case Scheduling Order filed by the Court on February 1, 2023 (the “CMO”). [Dkt. No. 27.] Specifically, Village requests that the deadlines for expert discovery be amended to conform to Federal Rule of Civil Procedure 26(a)(2)(D).

The CMO provides for the following schedule for expert discovery:

- Plaintiff’s expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) shall be made no later than August 28, 2023. In addition, Plaintiff will disclose its testifying experts’ names and CVs, as well as the general nature of their testimony, no later than July 24, 2023.
- Defendant’s expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) shall be made no later than September 8, 2023. In addition, Defendant will disclose its testifying experts’ names and CVs, as well as the general nature of their testimony, no later than August 4, 2023.
- All expert discovery, including expert reports and depositions, shall be completed no later than September 29, 2023.

Under the current schedule, therefore, Village has only **11 days** to serve and disclose any expert reports in rebuttal to those disclosed by Plaintiff.

This 11-day period is highly prejudicial to Village and is contrary to the Federal Rules of Civil Procedure. Village contemplates expert testimony only to rebut expert testimony offered first by Plaintiff, presumably on the calculation of damages. Rule 26(a)(2)(D) provides that where an

Honorable Jennifer L. Rochon

February 13, 2023

Page 2

expert report “is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C),” it must be disclosed “***within 30 days after the other party’s disclosure.***” Fed. R. Civ. P. 26(a)(2)(D) (emphasis added).

There is no cause (and, certainly, no good cause) to deviate from the 30-day time period allowed by Rule 26(a)(2)(D). Moreover, we suspect that the Court may have ordered this 11-day period inadvertently, when it changed all of the agreed dates that the parties had initially submitted on consent, and without intending to deprive Village of the 30-day period permitted to prepare rebuttal expert reports that is explicitly allowed by the Federal Rules.

We reached out to Plaintiff to seek consent to this modification of the schedule. Unfortunately, and no doubt sensing tactical advantage by jamming Village with a mere 11-day period for the preparation of rebuttal expert reports, Plaintiffs refused permission. Plaintiff could not provide us with any reason for refusing permission, especially when (a) with respect to the earlier, agreed scheduling order, Plaintiff was then willing to allow Village a full 30-day period for its expert report, and (b) Rule 26(a)(2)(D) itself allows 30 days.

To afford Village the time contemplated by the Federal Rules to disclose its rebuttal expert reports, if any, Village proposes that the schedule for expert discovery, as set forth in the CMO, be amended as follows:

- Plaintiff’s expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) shall be made no later than **August 28, 2023**. In addition, Plaintiff will disclose its testifying experts’ names and CVs, as well as the general nature of their testimony, no later than **July 24, 2023**.
- Defendant’s expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) shall be made no later than **September 27, 2023**. In addition, Defendant will disclose its testifying experts’ names and CVs, as well as the general nature of their testimony, no later than **August 28, 2023**.
- All expert discovery, including expert reports and depositions, shall be completed no later than **October 15, 2023**.

This proposed schedule cures the prejudice to Village and delays the completion of all discovery by a mere two weeks.

A proposed form of Order to correct the schedule is enclosed herewith.

Respectfully submitted.

/s/ Gavin J. Rooney

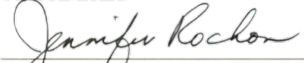
Gavin J. Rooney

cc: All Counsel of Record (via ECF)

The motion is DENIED with leave to renew when the scope of expert discovery is clearer. The Court will consider providing a reasonable extension but asks the parties to meet and confer in an effort to propose a joint request.

Dated: February 24, 2023
New York, New York

SO ORDERED


JENNIFER L. ROCHON
United States District Judge